

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Todor Georgiev	Art Unit :	2628
Patent No. :	7,411,595	Examiner :	Ryan R. Yang
Issue Date :	August 12, 2008	Conf. No. :	1276
Serial No. :	09/996,200		
Filed :	November 28, 2001		
Title :	TOOL FOR EXTRACTING AND MANIPULATING COMPONENTS OF WARPING TRANSFORMS		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d)

Applicant hereby petitions for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed July 23, 2008 for the above-referenced application indicates that the Patent Term Adjustment at issuance is 1273 days. Reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 1414 days to 1599 days, and to increase Total PTA from 1273 to 1458 days, is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) The PTO mailed a delayed 14-month first non-final Office Action on October 1, 2003, thereby according a PTO Delay of 246 days. Applicant does not dispute herein this patent term adjustment calculation for this PTO "A Delay."
- 2) The PTO mailed a delayed Examiner's Answer to Appeal Brief on March 21, 2005, thereby according a PTO Delay of 37 days. Applicant does not dispute herein this patent term adjustment for PTO Delay.
- 3) The PTO mailed a delayed response to the Reply Brief on February 10, 2006, thereby according a PTO Delay of 144 days. Applicant does not dispute herein this patent term adjustment for PTO Delay.

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the United States Patent and Trademark Office using the EFS –WEB system on this date: December 22, 2008

- 4) Applicant filed a response to the miscellaneous communication on March 8, 2006 (received at the PTO on March 13, 2006). Applicant was accorded a delay of 2 days. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
- 5) The PTO mailed a BPAI Decision on Appeal in favor of the applicant on February 22, 2007, thereby according a PTO Delay of 984 days. Applicant does not dispute herein this patent term adjustment for PTO Delay.
- 6) The PTO mailed a delayed non-final Office Action on September 27, 2007, thereby according a PTO Delay of 3 days. Applicant does not dispute herein this patent term adjustment for PTO Delay.
- 7) Applicant filed an Information Disclosure Statement on February 20, 2008 (received at the PTO on February 20, 2008). Applicant was accorded a delay of 55 days for a supplemental response. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
- 8) Applicant filed formal drawings after the Notice of Allowance on May 21, 2008 (received at the PTO on May 21, 2008) and a response to the Notice of Allowance on June 25, 2008 (received at the PTO on June 25, 2008). Applicant was accorded a delay of 84 days for a submission after allowance. Applicant does not dispute herein this patent term adjustment for Applicant Delay.
- 9) The application was filed on November 28, 2001 and the patent issued on August 12, 2008, more than three years later. No PTO Delay was calculated for issuance of the patent after three years from filing. Applicant respectfully submits that the PTO's calculation of this PTO "B Delay" contains an error and that the correct PTO Delay for issuance beyond three years from filing is 185 days, as outlined further below. The "B Delay" of 185 days does not include the additional PTO Delay of 1168 days after three years from filing, which overlaps with the "B Delay".

REMARKS

Applicant has calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (*Wyeth et al. v. Jon W. Dudas*, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can “overlap” is if they occur on the same day, and if an “A delay” occurs on one calendar day and a “B delay” occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. “A Delays” are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The *Wyeth* court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies “if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years,” and that “B delay” begins once the PTO has failed to issue a patent within three years, not before.

In the current PTA calculation, the Office has only given credit for the larger of “A Delay” or “B Delay,” rather than the combined sum of “A Delay” and “B Delay” (which does not include any days after three years from filing where “A” and “B” delays overlap).

In this patent, “A Delay” should be calculated as 246 days, and “B Delay” should be calculated as 185 days. Including the additional PTO Delay, the total PTO Delay should be calculated as 1599 days.

In consideration of the events described above, Applicant believes the PTA calculation of 1273 days is incorrect. As such, Applicant respectfully requests reconsideration of the patent term adjustment in the following manner:

- 1) Total PTO Delay should be calculated as 1599 days;
- 2) Total Applicant Delay should be calculated as 141 days; and
- 3) Total PTA should be calculated as 1458 days.

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Applicant notes that this patent is not subject to a terminal disclaimer.

Please apply the fee of \$200 required under 37 C.F.R. § 1.18(e) and any other required charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 22, 2008

/Spencer C. Patterson/

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